



U.S. Citizenship  
and Immigration  
Services

[REDACTED]

FILE:

[REDACTED]

Office: San Francisco, CA

Date:

1/1/04

IN RE:

[REDACTED]

PETITION: Application for Waiver of Grounds of Inadmissibility under Section 212(i) of the Immigration and Nationality Act, 8 U.S.C. § 1182(i)

ON BEHALF OF PETITIONER:

[REDACTED]

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

*Robert P. Wiemann*

Robert P. Wiemann, Director  
Administrative Appeals Office

**DISCUSSION:** The waiver application was denied by the District Director, San Francisco, California. A subsequent appeal was dismissed by the Administrative Appeals Office (AAO). The matter is now before the AAO on a motion to reopen. The motion will be granted and the previous decisions of the district director and the AAO will be affirmed.

The applicant is a native and citizen of the Philippines who was found to be inadmissible to the United States under section 212(a)(6)(C)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(6)(C)(i), for having procured admission into the United States by fraud or willful misrepresentation on May 2, 1999. The applicant married a citizen of the United States on January 18, 2001 and is the beneficiary of an approved Petition for Alien Relative. The applicant seeks a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i), in order to remain in the United States with her spouse.

The district director concluded that the applicant had failed to establish that extreme hardship would be imposed on a qualifying relative and denied the Application for Waiver of Grounds of Excludability (Form I-601) accordingly. *Decision of the District Director* dated August 2, 2002. The decision of the district director was affirmed on appeal by the AAO. *Decision of the AAO*, dated April 21, 2003.

On a motion to reopen, counsel contends that the AAO should have considered the applicant's appeal brief and supporting documentation as having been timely filed. Counsel submitted a brief, a letter from the applicant's husband [REDACTED] a United States citizen, hereinafter [REDACTED] a letter from [REDACTED] a psychologist, letters from family, friends, and employers, tax returns, credit card statements, and the applicant's medical records. Counsel asserts that [REDACTED] is suffering from extreme anxiety and depression as a result of the applicant's impending removal to the Philippines from the United States, and that separation from her would be devastating to him. Additionally, counsel maintains that [REDACTED] is concerned about the applicant's health. The entire record was considered in rendering this decision.

Section 212(a)(6)(C) of the Act provides, in pertinent part, that:

- (i) Any alien who, by fraud or willfully misrepresenting a material fact, seeks to procure (or has sought to procure or has procured) a visa, other documentation, or admission into the United States or other benefit provided under this Act is inadmissible.

Section 212(i) of the Act provides that:

The Attorney General [now the Secretary of Homeland Security (Secretary)] may, in the discretion of the Attorney General [Secretary], waive the application of clause (i) of subsection (a)(6)(C) in the case of an alien who is the spouse, son or daughter of a United States citizen or of an alien lawfully admitted for permanent residence, if it is established to the satisfaction of the Attorney General [Secretary] that the refusal of admission to the United States of such immigrant alien would result in extreme hardship to the citizen or lawfully resident spouse or parent of such an alien.

The applicant knowingly obtained a Philippine passport under an assumed name and used that document to gain admission into the United States by fraud on May 2, 1999.

A section 212(i) waiver of the bar to admission resulting from violation of section 212(a)(6)(C) of the Act is dependent first upon a showing that the bar imposes an extreme hardship to the citizen or lawful permanent resident spouse or parent of the applicant. Hardship the alien herself experiences upon deportation is irrelevant to section 212(i) waiver proceedings; the only relevant hardship in the present case is that suffered by [REDACTED]. Once extreme hardship is established, it is but one favorable factor to be considered in the determination of whether the Secretary should exercise discretion. *See Matter of Mendez*, 21 I&N Dec. 296 (BIA 1996).

The concept of extreme hardship “is not . . . fixed and inflexible,” and whether extreme hardship has been established is based on an examination of the facts of each individual case. *Matter of Cervantes-Gonzalez*, 22 I&N Dec. 560, 565 (BIA 1999). In *Matter of Cervantes-Gonzalez*, the Board of Immigration Appeals (BIA) provided a list of non-exclusive factors to determine whether an alien has established extreme hardship to a qualifying relative pursuant to section 212(i) of the Act. These factors include, with respect to the qualifying relative, the presence of family ties to U.S. citizens or lawful permanent residents in the United States, family ties outside the United States, country conditions where the qualifying relative would relocate and family ties in that country, the financial impact of the departure, and significant health conditions, particularly where there is diminished availability of medical care in the country to which the qualifying relative would relocate. *Id.* At 566. The BIA has held:

Relevant factors, though not extreme in themselves, must be considered in the aggregate in determining whether extreme hardship exists. In each case, the trier of fact must consider the entire range of factors concerning hardship in their totality and determine whether the combination of hardships takes the case beyond those hardships ordinarily associated with deportation. *Matter of O-J-O*, 21 I&N Dec. 381, 383 (BIA 1996). (Citations omitted).

The AAO notes that the present case arises within the jurisdiction of the Ninth Circuit Court of Appeals. The Ninth Circuit Court of Appeals has held that separation from family may be “[t]he most important single [hardship] factor,” and “[w]hen the BIA fails to give considerable, if not predominant, weight to the hardship that will result from family separation, it has abused its discretion.” *Salcido-Salcido v. INS*, 138 F.3d 1292, 1293 (9<sup>th</sup> Cir. 1998) (citations omitted).

Each of the *Cervantes* factors listed above is analyzed in turn. First examined is the financial impact of the applicant’s departure from the United States. [REDACTED] submitted a personal statement in which he explained that losing his wife’s financial contribution, by itself, would not constitute extreme financial hardship. He maintains that joining his wife in the Philippines is not a financially viable option because of the economy there, and alternatively, if his wife leaves the United States and he stays, he will be forced to support her in the Philippines and her aunts and uncles in the United States. [REDACTED] asserts that supporting two families would probably lead to him becoming homeless. [REDACTED] submitted federal income tax returns for the years 1999 and 2001; the 1999 return (husband only) shows a total income of \$70,967 and the 2001 return (applicant and husband) shows a total income of \$76,322. These tax returns show that [REDACTED] earns a

respectable income. The record contains no evidence of the applicant's income other than a letter indicating that she works 24 hours per week as an accounting clerk. Furthermore, the applicant provided no information about the Philippine economy or why she would be unable to support herself there, nor did the applicant provide evidence that her aunts and uncles in the United States could not earn an income. There is no evidence in the record addressing whether [REDACTED] could find suitable employment in the Philippines. Accordingly, the applicant has not demonstrated that her removal to the Philippines would cause serious financial hardship to [REDACTED].

The next *Cervantes* factor examined is country conditions where the qualifying relative would relocate. Because the applicant submitted no evidence concerning Philippine country conditions, this factor is given no weight in determining whether [REDACTED] will experience extreme hardship if he relocates to the Philippines with the applicant.

Another *Cervantes* factor is significant health conditions, particularly if appropriate medical care is unavailable in the country where the qualifying relative would relocate. The record contains a letter from [REDACTED] PhD and licensed psychologist, discussing the emotional state of [REDACTED] regarding the possible removal of the applicant to the Philippines. Because this letter primarily addresses hardship related to family separation, it will be discussed below under that *Cervantes* factor. The applicant submitted two medical documents related to her own health. The first describes the results of an examination by a dermatologist. This report refers to skin conditions such as acne and does not appear to raise any significant health concerns. The second document consists of the results of a CT scan of the applicant's abdomen and pelvis. The record contains no discussion of the meaning or significance of these test results, therefore they are not relevant in determining extreme hardship. Additionally, the results relate to the applicant's health, not the health of [REDACTED] the qualifying relative. Counsel contends in his brief that [REDACTED] is concerned about the applicant's health, however, the record contains no analysis of the applicant's medical condition or the effect of any such condition on [REDACTED].

The final *Cervantes* factor analyzed is family ties and the effect of separation from family. [REDACTED] submitted a statement explaining how the applicant's removal will affect him. He stated that before he found his wife, he bounced from one dysfunctional relationship to another, but after meeting her, his life gained purpose and direction. [REDACTED] statement concludes: "Before knowing her, I took my life as a meaningless existence. Taking her away from me, I believe, would literally kill me. I can not (sic) imagine life without Anna here with me. **I define that as an Extreme Hardship.**" [REDACTED] psychologist, [REDACTED], submitted an evaluation of his present emotional state and the potential effect the applicant's removal would have on him. [REDACTED] evaluation was based on nine sessions with [REDACTED] administered the Brief Symptom Inventory; when asked how he would feel if the applicant was deported, Mr. [REDACTED] responded that he would always be unhappy, irritable, frustrated, angry, overwhelmed, and distressed. [REDACTED] that he would not be functional in any capacity if his wife was sent back to the Philippines. [REDACTED] maintains that if [REDACTED] wife had to leave the country, he would have too much functional impairment and would not be able to cope with life. [REDACTED] explained in his statement, and he told [REDACTED] that his life was meaningless before he met the applicant and married her, and that his marriage had changed all his disgruntled viewpoints about life and his past. [REDACTED] also told [REDACTED] that he would have to live out a purposeless life if he had to be apart from his wife or if he had to live in the Philippines. [REDACTED] has expressed strong feelings for his wife. [REDACTED] wrote in support of those

feelings and maintained that [REDACTED] could not cope with being apart from his wife. Yet the record contains no evidence supporting the view that [REDACTED] would suffer extreme hardship if he lived in the Philippines with his wife. It should also be noted that [REDACTED] had a well-paying job in 1999, the year before he met his wife, which indicates a level of functioning not consistent with his claim that his life was meaningless before he met applicant.

Counsel also submitted a variety of letters from friends and relatives of the applicant and [REDACTED]. These letters of support do not directly relate to whether [REDACTED] would suffer extreme hardship if the applicant were removed to the Philippines.

U.S. court decisions have repeatedly held that the common results of deportation or exclusion are insufficient to prove extreme hardship. *See Hassan v. INS*, 927 F.2d 465, 468 (9th Cir. 1991). For example, *Matter of Pilch*, 21 I&N Dec. 627 (BIA 1996), held that emotional hardship caused by severing family and community ties is a common result of deportation and does not constitute extreme hardship. In addition, *Perez v. INS*, 96 F.3d 390 (9th Cir. 1996), held that the common results of deportation are insufficient to prove extreme hardship and defined extreme hardship as hardship that was unusual or beyond that which would normally be expected upon deportation. *Hassan v. INS*, *supra*, held further that the uprooting of family and separation from friends does not necessarily amount to extreme hardship but rather represents the type of inconvenience and hardship experienced by the families of most aliens being deported. The AAO recognizes that Mr. Mohr will endure hardship as a result of separation from the applicant. However, his situation, based on the record, is typical to individuals separated as a result of deportation or exclusion and does not rise to the level of extreme hardship.

A review of the documentation in the record fails to establish the existence of extreme hardship to the applicant's spouse caused by the applicant's inadmissibility to the United States. Having found the applicant statutorily ineligible for relief, no purpose would be served in discussing whether he merits a waiver as a matter of discretion.

In proceedings for application for waiver of grounds of inadmissibility under section 212(a)(6)(C) of the Act, the burden of proving eligibility remains entirely with the applicant. *See* Section 291 of the Act, 8 U.S.C. § 1361. Here, the applicant has not met that burden. Accordingly, the previous decisions of the district director and the AAO will not be disturbed.

**ORDER:** The motion is granted. The decision of dismissing the appeal is affirmed.